

ENTERED ON
SEP 29 2005
DOCKET

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CHAPTER 13
MARLENE H. OLIVER)	CASE NO. 96-75320
Debtor)	
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MARLENE H. OLIVER)	
Plaintiff)	
v.)	ADVERSARY PROCEEDING
HAMID MIKE SAMADI)	NO. 00-6893
Defendant)	

ORDER REGARDING DEFENDANT'S CLAIM

This adversary proceeding is before the court following remand from an appeal to the U.S. District Court. The parties have submitted various pleadings addressing the issues which were not fully resolved in prior orders in this adversary proceeding. Based upon the parties' pleadings the facts are undisputed.

Plaintiff asserts that Defendant is not entitled to postpetition interest on his claim. As set forth in a prior order, however, the value of the real property that secures Defendant's claim exceeds that principal amount of Defendant's claim. Therefore, pursuant to 11 U.S.C. §506(b), Defendant is entitled to postpetition interest. Defendant is not entitled, however, to augment his claim by the addition of late charges and expenses because the written agreement between the parties does not

provide for such charges and expenses. Section 506(b) expressly provides that such charges and expenses must be provided for in the agreement under which the claim arose.

Plaintiff also appears to suggest that the entry of Plaintiff's discharge should have cut off Defendant's right to post-discharge interest. That issue was resolved against Plaintiff in the case of *Universal American Mortgage Co. V. Bateman*, 331 F. 3d 821 (11th Cir. 2003). See also *In re Telfair*, 216 F. 3d 1333 (11th Cir. 2000). Plaintiff appears to suggest that *Bateman* should not apply in this adversary proceeding because it was decided after this adversary proceeding was filed. Plaintiff offered no legal argument or citation to statutory or case law to support that assertion. The argument lacks merit.


Defendant appears to seek imposition of punitive damages. Defendant alleges insufficient grounds to award punitive damages against Plaintiff for failing to timely repay the loan from Defendant. Defendant is compensated for the time value of the funds by the allowance of interest. Mere breach of contract does not support a claim for punitive damages. *Young v. Turner Heritage Homes, Inc.*, 241 Ga.App. 400, 526 S.E.2d 82 (1999). Any tort claim that arose postpetition which Defendant may seek to assert against Plaintiff or her attorney may be pursued in state court. Defendant also seeks to graft onto his secured claim an unsecured claim in the amount of approximately \$2,700. That unsecured claim was discharged and is unenforceable.

Plaintiff disputes Defendant's calculations of interest on the claim. Therefore, the undersigned has computed the interest due based upon the terms of the loan.

Defendant's claim as of November 15, 1995 was \$35,000 and the interest rate is 14.5%. The interest on that claim through September 15, 2005, equals \$30,868.79. Defendant acknowledges payments from Plaintiff made after November 15, 1995, of \$3,600 plus \$35,261.41, leaving a balance due to Defendant as of September 15, 2005 of \$27,007.38. Accordingly, it is hereby

ORDERED that the amount of Defendant's secured claim which remains unpaid and fully secured is \$27,007.38.

IT IS SO ORDERED, this the 28th day of September, 2005.



MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE